

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DERRICK L. JOHNSON,

Petitioner, : Case No. 3:15-cv-090

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

JEFFREY LISATH, Warden,
Pickaway Correctional Institution,

Respondent.

REPORT AND RECOMMENDATIONS

This case is before the Court on Petitioner's Motion to Strike (ECF No. 86) District Judge Rice's Order Adopting Third Supplemental Report and Recommendations recommending denial of Petitioner's Motion for Relief from Judgment (ECF No. 82).

The Third Supplemental Report and Recommendations ("Third R&R," ECF No. 81) was filed January 23, 2019, and served on Petitioner by mail the same day. It advised Petitioner that he had seventeen days to file objections. *Id.* at PageID 1147. Seventeen days from January 23, 2019, is February 9, 2019; to have been timely, Petitioner's objections were required to be deposited in the prison mail system by that date. By six days later no objections had been received and Judge Rice adopted the Third R&R with the notation that there had been no objections filed.

On February 19, 2019, the Court received Johnson's Motion for a 30-day extension of time to object (ECF No. 83). That Motion has an attached Declaration that it was mailed January 29, 2019. *Id.* at PageID 1151. The Magistrate Judge denied the Motion for Extension because it was received after Judge Rice had adopted the Third R&R (ECF No. 84).

Petitioner now provides a cash slip showing that the postage for his Motion for Extension of Time was processed by the prison on February 4, 2019 (ECF No. 86, PageID 1163). Although that was before the date on which the objections were due, Johnson was not mailing objections, but rather a motion for extension of time to file objections. Asking for time is not the same as getting time. Like any other litigant, Johnson was not entitled to assume his extension would be granted. Moreover, he still has not tendered any objections to the Third R&R and it is now nearly a month after such objections were due.

Petitioner's Motion to Strike should be DENIED.

March 5, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party=s objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).